IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE: PETITION OF MARIA FRICA TUDELA PANGELINAN AND CHRISTINA-MARIE E. SABLAN FOR REAPPORTIONMENT AND REDISTRICTING

SUPREME COURT NO. CV-07-0015-OA

Cite as: 2007 MP 14

Argued and Submitted July 3, 2007
Decided August 7, 2007

Maria Frica Tudela Pangelinan and Christina-Marie E. Sablan, Saipan, Commonwealth of the Northern Mariana Islands, Petitioners.
Ian Catlett, Legal Counsel, Commonwealth House of Representatives, for Invited Amicus Curiae Commonwealth House of Representatives.
Stephen Woodruff, Saipan, Commonwealth of the Northern Mariana Islands, for Invited Amicus Curiae Saipan Mayor's Office.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice, ALEXANDRO C. CASTRO, Associate Justice, and JOHN A. MANGLONA, Associate Justice

PER CURIAM:

¶ 1 Petitioners request this Court to exercise its constitutional mandate to reapportion and redistrict the Commonwealth house of representatives pursuant to Article II, Section 4(b) of the Constitution of the Commonwealth of the Northern Mariana Islands, as both the legislature and the governor failed to act within the time frame provided therein. We find petitioners adequately pled the constitutional prerequisites initiating this Court's jurisdiction. Accordingly, after careful consideration of the law, legislative history and policy, and the arguments presented by petitioners and amici curiae, we conclude as follows:[1]

(1) Apportionment of the house of representatives shall be based on the total number of persons residing in the Commonwealth;

(2) The house of representatives shall be enlarged by two members, both representing Saipan, to reflect the increase in population;

(3) Saipan shall be redistricted into five election districts as described herein;

(4) We are without jurisdiction to order the Commonwealth government to participate in the 2010 United States Census; and

(5) Equity and public policy require awarding petitioners' request for costs.

¶ 2 Due to time constraints imposed by the November 2007 election, this decision outlines petitioners' arguments and our conclusions. A supplemental opinion, with detailed analysis, will be issued at a later date.

I

¶ 3 On May 14, 2007, Maria Frica Tudela Pangelinan and Christina-Marie E. Sablan petitioned this Court to redistrict the island of Saipan pursuant to Article II, Section 4 of the NMI Constitution.[2] Section 4 requires the house of representatives be reapportioned or redistricted at

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[1] Only communications substantially conforming to the Commonwealth Rules of Appellate Procedure are considered. As such, the May 22, 2007 letter from Froilan C. Tenorio, the June 29, 2007 letter from Stephen C. Woodruff, and the July 6, 2007 letter from Ambose M. Bennett play no part in our decision.

[2] Article II, Section 4 of the NMI Constitution provides:

> a) At least every ten years and within one hundred twenty days following publication of the results of a decennial census, the legislature shall reapportion the seats in the house of representatives or revise the districts for electing representatives as required by changes in Commonwealth population or by law. A reapportionment or redistricting plan shall provide for contiguous and compact districts and for representation by each member of the house of representatives of approximately the same

least every ten years to compensate for population changes. The legislature is mandated to devise a reapportionment or redistricting plan "within one hundred twenty days following publication of the results of a decennial census," such plan providing "for representation by each member of the house of representatives of approximately the same number of residents to the extent permitted by the separate islands and the distribution of population in the Commonwealth." N.M.I. Const. art. II, § 4(a). If the legislature fails to act within the prescribed 120 day period, the task of reapportioning or redistricting falls to the governor, who must likewise act within 120 days. If both the legislature and the governor fail to act, any qualified voter may petition this Court to do so, such petition initiating this Court's "original and exclusive jurisdiction to review a [reapportionment or redistricting plan] and to amend it to comply with the requirements of th[e NMI] Constitution or to establish a plan . . . ." N.M.I. Const. art. II, § 4(b).

¶ 4 Representation in the Commonwealth house was last modified by the Reapportionment Act of 1991, 1 CMC §§ 1501-04. Petitioners argue the Act violates the one person, one vote standard applied to state legislatures in *Reynolds v. Sims*, 377 U.S. 533, 568 (1964), since it apportions house seats by total population rather than United States citizens. *See also Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964) (applying one person, one vote to United States Congressional elections). The Act is based on the 1990 United States Census, which reported Saipan and the Northern Islands to have 38,932 residents, 17,201 of which were United States citizens. Rota had 2,295 residents, 1,595 being citizens, and Tinian and Aguiguan had 2,118 residents, with 1,286 citizens. Since the majority of people residing in the Commonwealth are non-citizens – the only United States jurisdiction so situated – petitioners maintain counting non-citizens for purposes of apportionment impermissibly dilutes the votes of Rota and Tinian residents, where the ratios of non-citizens are much lower than Saipan. Moreover, population changes during the intervening years have exacerbated the alleged inequities.

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number of residents to the extent permitted by the separate islands and the distribution of population in the Commonwealth.

b) If the legislature fails to act pursuant to section 4(a), the governor shall promulgate a reapportionment or redistricting plan within one hundred twenty days after the expiration of the time for the legislature to act. The governor's plan shall be published in the same manner as an act of the legislature and upon publication shall have the force of law. Upon the petition of any person qualified to vote, the Commonwealth appeals court or the United States District Court if no Commonwealth appeals court has been created under section 3 of article IV has original and exclusive jurisdiction to review a plan and to amend it to comply with the requirements of this Constitution or to establish a plan if the governor has failed to act within the time provided.

N.M.I. Const. art. II, § 4.

¶ 5 The 2000 United States census lists the population of Saipan and the Northern Islands as 62,398, Rota as 3,283, and Tinian and Aguiguan as 3,540. However, United States citizens number only 25,909,[3] 2,266, and 1,953, respectively. Based on these discrepancies, petitioners argue the votes of Rota and Tinian residents are diluted 71 percent and 83 percent respectively in relation to Saipan residents. Petitioners submitted a plan they believe remedies the alleged debasement of Rota and Tinian votes by redistricting Saipan into twelve election districts, each choosing a single representative. *See* Appendix A.

¶ 6 In addition to redistricting the house of representatives, petitioners also request an order instructing the appropriate Commonwealth governmental agency to participate in the United States 2010 Census Redistricting Data Program. Petitioners maintain that participation will ensure the Commonwealth is presented with statistical information necessary to guarantee voter equality in the future. Lastly, petitioners request reimbursement of costs.

¶ 7 Petitioners have properly initiated our Article II, Section 4(b) jurisdiction. We take judicial notice that more than 240 days have past since publication[4] of the 2000 United States Census without legislative or gubernatorial action to reapportion or redistrict the house of representatives. Thus, when petitioners, as qualified Commonwealth voters, filed their petition, jurisdiction vested in this Court. N.M.I. Const. art. II, § 4(b); *see Sablan v. N. Mariana Islands Bd. of Elections*, 1 CR 741, 751 (1983).

II

¶ 8 This case presents both the opportunity and necessity to address the relationship between the Covenant, the Commonwealth Constitution, and the Federal Constitution. Although this Court has made brief excursions into similar issues in the past, the present case calls for a more thorough analysis – one exploring the historical, political, and legal relationship between the Commonwealth and the United States. However, against the need for analytical diligence must be weighed this matter's exigency, as preparations for the November 2007 elections are currently underway. Accordingly, we have determined the most prudent course of action is to issue our conclusions at this time, with additional reasoning to follow.

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[3] Petitioners' calculate 25,913 United States citizens in Saipan and the Northern Islands. We include our revised calculation.

[4] We need not determine the exact date of publication which would satisfy the test announced in *Sablan v. N. Mariana Islands Bd. of Elections*, 1 CR 741, 753-54 (1983); that is, "when an official counting of the people, showing the population figures broken down into usable data . . . have been officially released to the public, or been made available for the use of the general assembly." The record demonstrates the Commonwealth government was in possession of the 2000 Census data by September 24, 2003 at the latest. House of Representatives Brief, Ex. E. Over three and a half years elapsed between September 24, 2003, and the filing of this petition, far more than the required 240 days.

¶ 9 Section III of this opinion addresses persons counted for apportionment and districting, and outlines Saipan's revised election districts with representatives allotted to each district. We briefly discuss our conclusions on these issues, but full analysis will follow in a supplemental opinion. Section IV of this opinion addresses participation in the 2010 United States Census and the award of costs. We find these issues do not require analysis beyond that appearing here.

III

A

Total Population Counted for Apportionment and Districting

¶ 10 Article II, Section 4(a) of the NMI Constitution instructs that reapportionment or redistricting plans provide "for representation by each member of the house of representatives of approximately the same number of *residents* to the extent permitted by the separate islands and the distribution of *population* in the Commonwealth." (emphasis added). Petitioners direct our attention to the terms "residents" and "population," asserting the former is a subset of the later. They suggest the drafters, by counting only "residents," intended to exclude nonresident workers for purposes of apportionment and districting. Although we appreciate petitioners' logic – a classifier surely excludes its negative – petitioners construct their argument by abstracting the term "nonresident worker" from its context.

¶ 11 "Nonresident worker"[5] is an immigration status bearing no direct relationship with legislative apportionment. Although the nonresident worker classification was familiar to our Constitution's drafters, *see generally* T.T.C. tit. 49, we do not understand their use of "residents" in Article II, Section 4(a) to be in opposition to "nonresident workers." Rather, for purposes of reapportionment or redistricting, "'residents' may mean persons who are counted in a census or other enumeration made by the government." ANALYSIS OF THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, Section 4(a). This language is permissive, leaving some degree of discretion to the legislature. We conclude that Article II, Section 4(a) does not, by its own language, exclude nonresident workers. Nor do we find that the legislature has signaled a desire

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[5] The Commonwealth Code defines "nonresident worker" as:

> [A]ny available individual who is at least 18 years old and who is capable of performing services or labor desired by an employer and who is not a resident worker. Nonresident worker shall not include any immediate relative, spouse or children including legally adopted children of a U.S. citizen or any foreign investor, or a person in the Northern Mariana Islands between and including January 1, 1974 to November 3, 1986.

3 CMC § 4412(i)

to exclude nonresident workers from reapportionment figures.[6] Evidence indicates the legislature considered total population[7] as reported by the United States Census in both reapportionments since our Constitution's drafting. *See* S. Stand. Comm. Rep. 3-252 (N. Mar. I. 1983); H.R. Stand. Comm. Rep. 3-158 (N. Mar. I. 1983); PL 3-78.

¶ 12 Petitioners maintain that only United States citizens should be considered for reapportionment or redistricting. They argue that the high percentage of noncitizens residing in the Commonwealth, and their uneven distribution, cause certain Commonwealth residents to wield increased voting strength in violation of the one person, one vote principle. We disagree. Article II, Section 4(a) does not require, and the legislature has not relied upon, figures other than total population. If any category of persons is to be excluded for purposes of legislative apportionment, the Court is not the proper body to pioneer it.

B

Saipan Redistricted into Five Election Districts

¶ 13 Previously, the makeup of the house of representatives derived from Article II, Section 3 of the NMI Constitution, as augmented by the Reapportionment Act of 1991, 1 CMC §§ 1501-04. Saipan was divided into four election districts, electing a total of sixteen representatives. 1 CMC § 1504.[8] Based on increased population as reported in the 2000 United States Census, we

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[6] This language is not meant to imply that nonresident workers may be excluded. We do not consider the constitutionality of excluding nonresident workers from the population counted for reapportionment.

[7] Although discussion of population figures, and particularly what they represent, is minimal, there is no indication the legislature considered figures other than total population. In the absence of language discussing persons included in population figures, we assume it was a non-issue. *See Commonwealth v. Saburo*, 2002 MP 3 ¶ 12.

[8] Section 1504 of the Commonwealth Code provides:

> For the purpose of electing 16 members of the House of Representatives from Saipan and the islands north of Saipan, Saipan shall be divided into the following four election districts:
>
> *First District:* Municipal districts 6 and 10, electing six representatives.
>
> *Second District:* Municipal districts 1, 2, 3, 4 and 5, electing two representatives.
>
> *Third District:* Municipal districts 7 and 11, plus the islands north of Saipan, minus that portion of census enumeration district 11 or its functional equivalent which overlaps into municipal districts 7 and 11, electing six representatives.
>
> *Fourth District:* Municipal districts 8 and 9, plus that portion of census enumeration district 11 or its functional equivalent which overlaps into municipal districts seven and 11, electing two representatives.

1 CMC § 1504.

conclude that the house of representatives shall be enlarged by two members to give Saipan eighteen representatives.

¶ 14 Further, since the 2000 United States Census did not report population statistics within then-current election districts, and because this Court is without population information other than that provided in the census, we conclude that Saipan must be redistricted along census boundaries to ensure sufficient representational equality. Accordingly, Saipan shall be redistricted into five election districts by grouping census block groups. The districts seek to maintain populations with historically and/or geographically similar interests while adhering to the constitutional requirement of "contiguous and compact districts" which ensure "representation by each member of the house of representatives of approximately the same number of residents to the extent permitted by the separate islands and the distribution of population in the Commonwealth." N.M.I. Const. art. II, § 4(a). Appendix B shows the new districts. Appendix C lists the census block groups included in each election district, along with representational deviations.

IV

Order to Participate in the 2010 United States Census

¶ 15 This Court's Article II, Section 4(b) jurisdiction to reapportion and redistrict does not extend so far as ordering the legislative branch, executive branch, or other governmental agency to participate in the 2010 United States Census. Nor have petitioners cited an alternative source of jurisdiction. In the absence of express authority to the contrary, we conclude that participation in the 2010 United States Census is a question best left to the political process, and thus we are without authority to require it.

Award of Costs

¶ 16 Commonwealth Rule of Appellate Procedure 39(a)[9] authorizes awards of costs only in appeals, unless provided by law. Petitioners have not cited any law or rule authorizing an award of costs in the present case. Nevertheless, because petitioners' request is reasonable,[10] and

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[9] Rule 39(a) states:

> Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, or affirmed in part or reversed in part, or is vacated, costs may be allowed as ordered by the Court.

Com. R. App. P. 39(a).

[10] Although petitioners' have not specified an exact amount, at the hearing they stated the total would be under $1000.

because this Court believes it ill-advised to perpetuate disincentives for citizens acting to remedy governmental failures, we rely upon our Rule 2[11] authority to grant petitioners' request.

¶ 17 As the duty to reapportion or redistrict the house of representatives is, by nature and by law, a legislative function, we hold that both houses of the Commonwealth legislature jointly and severally liable for reasonable costs incurred by petitioners in furtherance of this action.[12] Petitioners shall therefore submit a bill of costs within fourteen days after entry of judgment.

V

¶ 18 For the foregoing reasons, the petition is GRANTED IN PART and DENIED IN PART. This Court shall retain jurisdiction over the matter until such time as the supplemental opinion is issued, unless this Court orders otherwise.

Concurring:
Castro, Manglona, J.J.

Concurring in part, dissenting in part:
Demapan, C.J.:

I respectfully dissent from section III(B) of the majority's opinion, and concur with all other parts.

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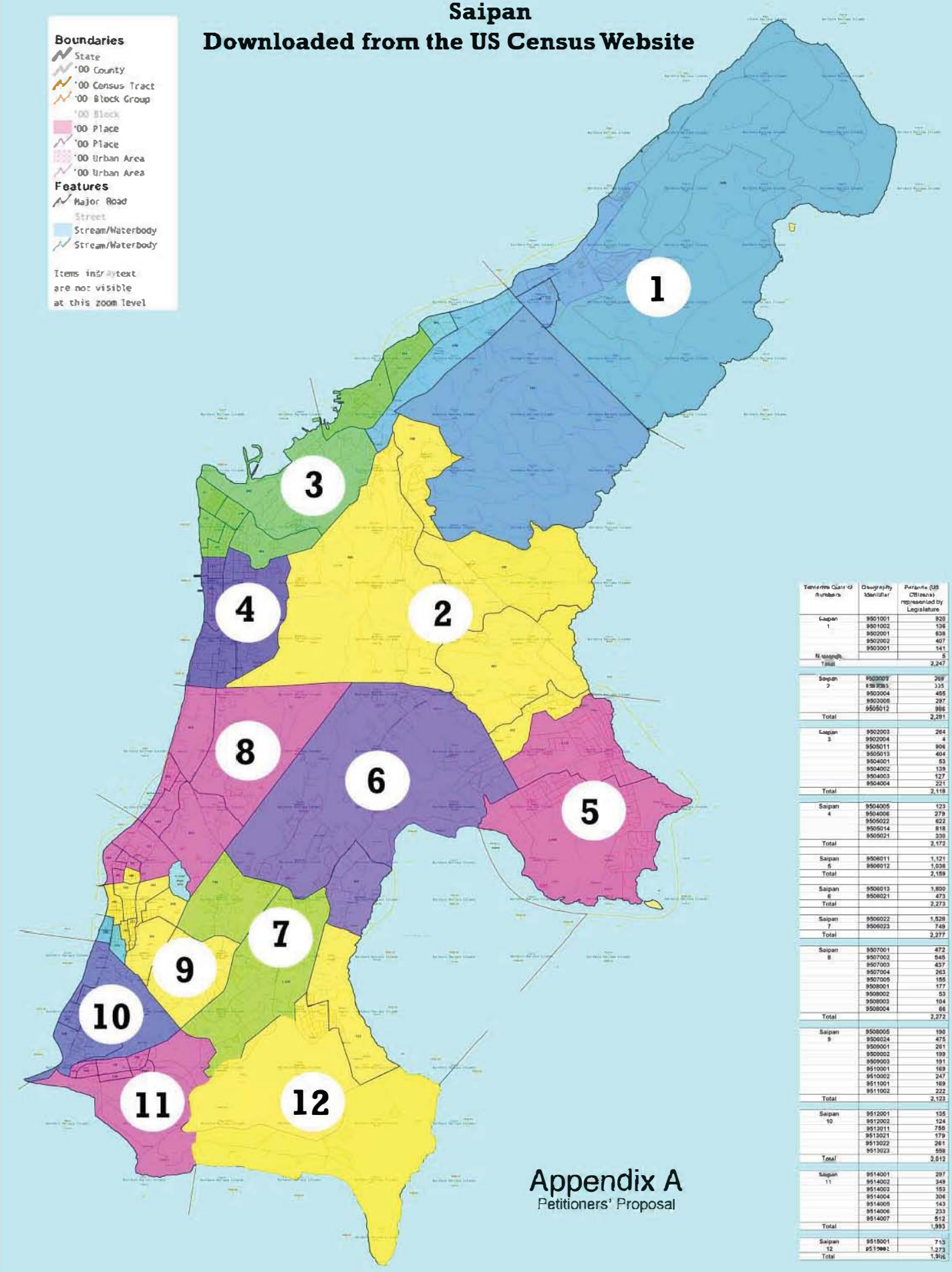
[11] Rule 2 provides:

> In the interest of justice, or to expedite a decision, or for other good cause shown, this Court may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case, on application of a party or on its own motion, and may order proceedings in accordance with its direction.

Com. R. App. P. 2.

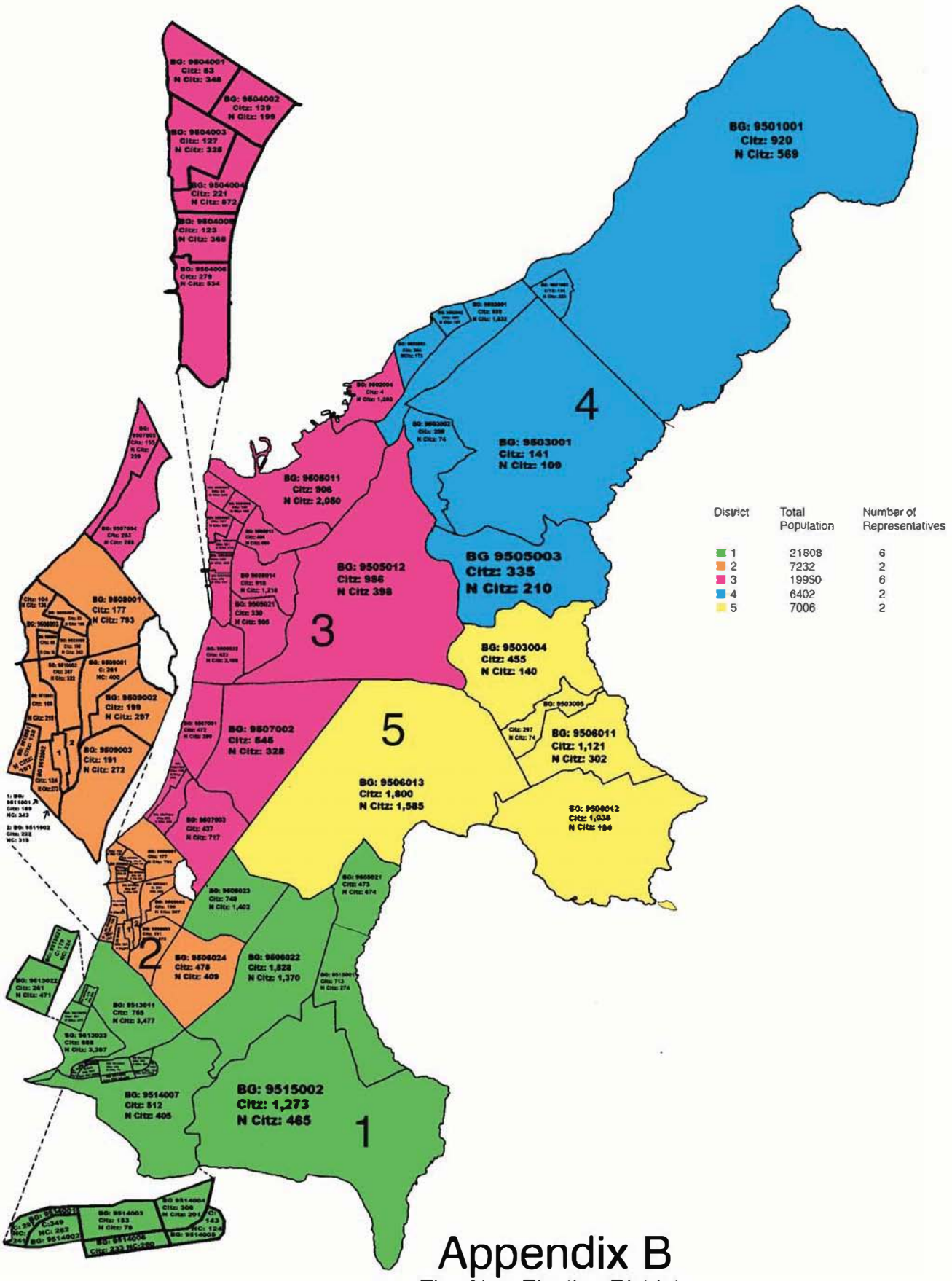
[12] We take no position on petitioner Pangelinan's offer to reimburse her private expenditures with funds from her senate expense account. Although we are unaware of any legal reason precluding such a reimbursement, neither do we believe it proper for the Court to interfere in internal senate matters. We leave such expenditure decisions to the proper authorities within each house.

Saipan
Downloaded from the US Census Website



Territorial District Numbers	Geography Identifier	Persons (US Citizens) represented by Legislature
Saipan 1	9501001	920
	9501002	136
	9502001	638
	9502002	407
	9503001	141
Northern Islands		5
Total		2,247
Saipan 2	9503002	269
	9503003	335
	9503004	455
	9503006	297
	9505012	986
Total		2,281
Saipan 3	9502003	264
	9502004	4
	9505011	906
	9505013	404
	9504001	53
	9504002	138
	9504003	127
	9504004	221
Total		2,118
Saipan 4	9504005	123
	9504006	279
	9505022	622
	9505014	818
	9505021	330
Total		2,172
Saipan 5	9506011	1,121
	9506012	1,038
Total		2,159
Saipan 6	9506013	1,800
	9506021	473
Total		2,273
Saipan 7	9506022	1,528
	9506023	749
Total		2,277
Saipan 8	9507001	472
	9507002	545
	9507003	437
	9507004	263
	9507005	155
	9508001	177
	9508002	53
	9508003	104
	9508004	66
Total		2,272
Saipan 9	9508005	190
	9506024	475
	9509001	261
	9509002	199
	9509003	191
	9510001	169
	9510002	247
	9511001	169
	9511002	222
Total		2,123
Saipan 10	9512001	135
	9512002	124
	9513011	758
	9513021	179
	9513022	261
	9513023	556
Total		2,012
Saipan 11	9514001	297
	9514002	348
	9514003	159
	9514004	306
	9514005	143
	9514006	233
	9514007	512
Total		1,993
Saipan 12	9515001	713
	9515002	1,273
Total		1,986

Appendix A
Petitioners' Proposal



Appendix B

Five New Election Districts

August 7, 2007

District 6
Tinian – One Representative
Population: 3540
+2.3% deviation from ideal district

District 7
Rota – One Representative
Population: 3283
-5.1% deviation from ideal district

District 1
(Six Representatives)
(+5% deviation from ideal district)

Block Group	Population
9605021	1147
9506022	2898
9506023	2151
9515001	987
9515002	1738
9513011	4232
9513021	403
9513022	732
9513023	3955
9514001	538
9514002	611
9514003	232
9514004	507
9514005	267
9514006	493
9514007	917
Total	21808

District 2
(Two Representatives)
(+4.5% deviation from ideal district)

Block Group	Population
9509001	661
9509002	496
9509003	463
9510001	388
9510002	569
9511001	512
9511002	537
9512001	242
9512002	397
9508001	970
9508002	238
9508003	239
9508004	104
9508005	532
9506024	884
Total	7232

District 3
(Six Representatives)
(-3.9% deviation from ideal district)

Block Group	Population
9507001	752
9507002	873
9507003	1154
9507004	552
9507005	414
9504001	401
9504002	338
9404003	452
9504004	1093
9504005	491
9504006	813
9505011	2956
9505012	1384
9505013	989
9505014	2036
9505021	1235
9505022	2811
9502004	1206
Total	19950

District 4
(Two Representatives)
(-7.5% deviation from ideal district)

Block Group	Population
9502001	2470
9502002	564
9502003	437
9503001	250
9503002	282
9505003	545
9501001	1489
9501002	359
N. Islands	6
Total	6402

District 5
(Two Representatives)
(+1.2% deviation from ideal district)

9503004	595
9503005	371
9506011	1423
9506012	1232
9506013	3385
Total	7006

Maximum Deviation = 12.5%

Appendix C

Composition of Saipan Election Districts by Block Group and Percent Deviation of Districts